

§ 404.510a

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of a violation of such deduction provisions.

[27 FR 1162, Feb. 8, 1962, as amended at 28 FR 14492, Dec. 31, 1963; 34 FR 14888, Sept. 27, 1969; 36 FR 23361, Dec. 9, 1971; 43 FR 31318, July 21, 1978; 44 FR 20653, Apr. 6, 1979; 59 FR 1634, Jan. 12, 1994; 60 FR 17445, Apr. 6, 1995]

§ 404.510a When an individual is “without fault” in an entitlement overpayment.

A benefit payment under title II or title XVIII of the Act to or on behalf of an individual who fails to meet one or more requirements for entitlement to such payment or a benefit payment exceeding the amount to which he is entitled, constitutes an entitlement overpayment. Where an individual or other person on behalf of an individual accepts such overpayment because of reliance on erroneous information from an official source within the Social Security Administration (or other governmental agency which the individual had reasonable cause to believe was connected with the administration of benefits under title II or title XVIII of the Act) with respect to the interpretation of a pertinent provision of the Social Security Act or regulations pertaining thereto, or where an individual or other person on behalf of an individual is overpaid as a result of the adjustment upward (under the family maximum provision in section 203 of the Act) of the benefits of such individual at the time of the proper termination of one or more beneficiaries on the same social security record and the subsequent reduction of the benefits of such individual caused by the reentitlement of the terminated beneficiary(ies) pursuant to a change in a provision of the law, such individual, in accepting such overpayment, will be deemed to be *without fault*. For purposes of this section *governmental agency* includes intermediaries and carriers under contract pursuant to sections 1816 and 1842 of the Act.

[39 FR 43716, Dec. 18, 1974]

§ 404.511 When an individual is at “fault” in a deduction overpayment.

(a) *Degree of care.* An individual will not be *without fault* if the Administration has evidence in its possession which shows either a lack of good faith

or failure to exercise a high degree of care in determining whether circumstances which may cause deductions from his benefits should be brought to the attention of the Administration by an immediate report or by return of a benefit check. The high degree of care expected of an individual may vary with the complexity of the circumstances giving rise to the overpayment and the capacity of the particular payee to realize that he is being overpaid. Accordingly, variances in the personal circumstances and situations of individual payees are to be considered in determining whether the necessary degree of care has been exercised by an individual to warrant a finding that he was without fault in accepting a *deduction overpayment*.

(b) *Subsequent deduction overpayments.* The Social Security Administration generally will not find an individual to be without fault where, after having been exonerated for a “deduction overpayment” and after having been advised of the correct interpretation of the deduction provision, the individual incurs another “deduction overpayment” under the same circumstances as the first overpayment. However, in determining whether the individual is without fault, the Social Security Administration will consider all of the pertinent circumstances surrounding the prior and subsequent “deduction overpayments,” including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which the individual may have.

[16 FR 13054, Dec. 28, 1951, as amended at 59 FR 1634, Jan. 12, 1994]

§ 404.512 When adjustment or recovery of an overpayment will be waived.

(a) *Adjustment or recovery deemed “against equity and good conscience.”* In the situations described in §§ 404.510(a), (b), and (c), and 404.510a, adjustment or recovery will be waived since it will be deemed such adjustment or recovery is *against equity and good conscience*. Adjustment or recovery will also be deemed *against equity and good conscience* in the situation described in § 404.510(e), but only as to a month in which the individual’s earnings from